REMARKS

The present reply is in response to the Office action dated December 21, 2007, where the Examiner has maintained the rejection of claims 1 – 13 and 21 – 28. By this amendment, claims 1, 7, 23, and 24 have been amended. Claims 1 - 13 and 21 - 28 remain pending in the present application with claims 1, 7, 23, and 24 being the independent claims. Reconsideration and allowance of pending claims 1 – 13 and 21 – 28 in view of the present amendments and remarks are respectfully requested.

A.   Rejection of Claims 1 – 5 Under 35 USC §103

In the Office Action, claims 1 – 5 have been rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Publication No. 2004/0005889 ("Shanahan") in view of U.S. Publication No. 2002/1023336 ("Kamada") and further in view of U.S. Patent No. 6,678,361 ("Rooke") and further in view of U.S. Patent No. 2004/0121818 (Paakkonen). The Office Action relies primarily on Shanahan as teaching the elements of the claims and states that the combination of Shanahan with Kamada, Paakkonen and Rooke would have been obvious to a person of ordinary skill in the art. This rejection is traversed as follows.

A claim is unpatentable if the differences between it and the cited references would have been obvious at the time of the invention. As stated in MPEP § 2143, there are three requirements to establish a *prima facie* case of obviousness.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the cited reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the cited references, and not based on Applicant's disclosure.

1. Suggestion or Motivation to Combine

In the Office Action, no motivation has been supplied for combining the references. With respect to the independent claims 1, the foregoing rejections all rely on Shanahan, Kamada, Rooke and Paakkonen. While applicant asserts that the

combination of all of the references fail to describe the limitations of the amended claims, the motivation to combine the references is lacking.

For example Shanahan describes a device for programming user-defined information into an electronic device. On the other hand Kamada is related to a "software sales method." (See, Kamada, Paragraph 0013). As such, Kamada is interested in selling its software to anyone who pays for it. Further Kamada provides a user-dedicated storage area for a cellular phone where the purchased software is downloaded. Shanahan on the other hand allows a user to program customized information into his or her programmable device. Similarly, Rooke is concerned with delivering messages between devices. (See, Rooke, Column 2, Lines 16-29) In Rooke, the profile is concerned with the features of the devices in order to determine whether the messages can be delivered. (See, Rooke, Column 1, Lines 37-42, citing the fact that as messages are received the available memory is reduced.) Further Paakonen is concerned with providing ringing images on mobile calls. These ringing images are received as a consequence of a connection request from one telephone to a mobile device. Because the Office Action has not cited any motivation taught by the references themselves to combine the diverse systems of Shanahan, Paakonen, Kamada, and Rooke, Applicant respectfully submits that the only logical connection between the references is the general concept of moving data over a wireless network, and that the cited reference is only modified in retrospect, in light of the present claim.

Even if there was a motivation to combine the references, combining the references will be moot in light of the amendment to the claims. For example the present claim 1 includes "receiving from a wireless communication device a wireless data connection message at a tool kit server having access to a data storage area, the tool kit server having a network toolkit including programs configured to execute on the tool kit server, the network toolkit comprising multiple discrete computer programs that provide a single interface for access to the multiple discrete programs, the network toolkit configure to serve a plurality of wireless communication devices at any given time" and "providing a menu of available connectivity toolkit utilities in response to a request from the wireless communication device, if the account status is current, wherein the menu is displayed on the wireless communication device, the request

comprising a unique file identifier provided to the wireless communication device by the toolkit server in the context of a directory listing." The Office Action cites Shanahan as the only reference teaching these limitations. Thus if Shanahan fails to describe these limitations, combining Shanahan with the other references including Paakonen, Kamada, and Rooke will fail to cure the defect of Shanahan.

2. Reasonable Expectation of Success

Further, the Examiner has not demonstrated that the modification of Shanahan with the contrasting teachings of Kamada, Paakonen and Rooke points to the reasonable expectation of success in the present claims, which is the second requirement of the obviousness analysis. As previously stated, the teachings of Shanahan oppose the teachings of Kamada, Paakonen and Rooke or the relevant limitations of claim 1, renders the combination moot.

3. Combined References Must Teach All Claim Limitations

With respect to the third prong of an obviousness analysis, the combination of the references does not yield all the limitations of the claims. Specifically, claim 1 requires that "receiving from a wireless communication device a wireless data connection message at a tool kit server having access to a data storage area, the tool kit server having a network toolkit including programs configured to execute on the tool kit server, the network toolkit comprising multiple discrete computer programs that provide a single interface for access to the multiple discrete programs, the network toolkit configure to serve a plurality of wireless communication devices at any given time" and "providing a menu of available connectivity toolkit utilities in response to a request from the wireless communication device, if the account status is current, wherein the menu is displayed on the wireless communication device, the request comprising a unique file identifier provided to the wireless communication device by the toolkit server in the context of a directory listing." Support for these amendments can be found in paragraph 23 and paragraph 33, for example.

The Office Action cites Shanahan as describing a connectivity tool kit to a wireless communication network that receives a wireless data connection from a wireless communication device. However Shanahan fails to describe "receiving a wireless data connection message to a tool kit server having access to a data storage

area from a wireless communication device, the tool kit server having a network toolkit including programs configured to execute on the tool kit server, the network toolkit comprising multiple discrete computer programs that provide a single interface for access to various discrete programs, the network toolkit configure to serve a plurality of wireless communication devices at any given time". On the contrary Shanahan describes a programming apparatus that includes a processing circuitry that includes a first and second communication links. (page 1 paragraph 8, page 2 paragraph 23) The programming apparatus simply allows a computer user device to select a piece of information from a source, for example a remote database using the first communication link. The other element of the programming apparatus is that it can download the information requested by the user and compare the format with that required by the user device to determine format compatibility. If the formats are compatible then the programmable apparatus may download the selected information. Further the apparatus and methods described in Shanahan only allow a user to program user-defined information. (page 1 paragraph 8) This is different from the limitation of claim 1. Therefore Shahanan fails to describe the limitation of "receiving a wireless data connection message to a tool kit server having access to a data storage area from a wireless communication device, the tool kit server having a network toolkit including programs configured to execute on the tool kit server, the network toolkit comprising multiple discrete computer programs that provide a single interface for access to various discrete programs, the network toolkit configure to serve a plurality of wireless communication devices at any given time."

The examiner also states that Shanahan describes providing a menu of available connectivity toolkit utilities, wherein the menu is displayed on the wireless communication device. Applicant asserts that amended claim 1 is patentably distinct from Shanahan. For example amended claim 1 describes "providing a menu of available connectivity toolkit utilities in response to a request from the wireless communication device, if the account status is current, wherein the menu is displayed on the wireless communication device, the request comprising a unique file identifier provided to the wireless communication device by the toolkit server in the context of a directory listing." Claim 1, 12 and 21 of Shanahan fail to describe "providing a menu of

available connectivity toolkit utilities <u>in response to a request from the wireless</u> <u>communication device.</u>" At best the Shanahan describes allowing a user to browse a list of video files or providing a list of video files to a user. Even if this limitation of Shanahan is determined to be similar to providing a menu in response to a request, Shanahan fails to describe "<u>the request comprising a unique file identifier provided to</u> <u>the wireless communication device by the toolkit server in the context of a directory</u> <u>listing</u>" Accordingly Shanahan fails to describe the limitations of claim 1. The addition of Kamada only addresses the limitation only address the limitation of authenticating a user associated with the wireless communication device. Thus Kamada fails to cure the defect of Shanahan. For similar reasons Paakkonen, Rooke, Pederson and Lehaff all fail to cure the defects of Shanahan. Accordingly claim 1 is patentable in view of the references.

4. Effect of KSR

After the recent Supreme Court decision in the KSR case, although it is clear that the above analysis using the Federal Circuit's teaching-suggestion-motivation test is not the only way to approach the obviousness inquiry, it remains a useful tool in the obviousness inquiry. However, even if an alternative tool is employed as part of the obviousness inquiry, it is clear from KSR that any combination of references in an obviousness rejection must provide reasonable inferences that are based on substantial evidence in the record. Here, no such substantial evidence has been identified and therefore even after KSR, Applicant asserts that the pending claims are not obvious in view of the cited references of record.

B.   Independent Claims 7, 23 and 24

Independent claims 7, 23 and 24 are also presently in condition for allowance for the same reasons set forth with respect to independent claim 1.

C.   Dependent Claims 2-6, 8-13 and 21-22

Given that dependent claims 2-6, 8-13 and 21-22 depend from independent claims 1, 7, 23 and 24 respectively, at least for the reasons similar to those discussed above, it is respectfully submitted that claims 2-6, 8-13 and 21-22 are not obvious with respect to the cited references. Withdrawal of the rejections is respectfully requested.

E.   Conclusion

For all the foregoing reasons, an early allowance of claims 1-13 and 21-28 pending in the present application is respectfully requested. If necessary, applicant requests, under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a). The Director is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted,

Dated: <u>March 10, 2008</u>

/George W. Luckhardt/
George W. Luckhardt
Reg. No. 50,519

George W. Luckhardt
KYOCERA WIRELESS CORP.
Attn: Patent Department
P.O. Box 928289
San Diego, California 92192-8289
Tel: (858) 882-2593
Fax: (858) 882-2485